73-112

BRIEF FOR PETITIONERS

JUL 13

MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 73-112

C. FRANCIS MURPHY, CORPORATION COUNSEL OF THE DISTRICT OF COLUMBIA, ET AL.,
Petitioners,

v.

NANCY SULLIVAN, ET AL.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR PETITIONERS

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on April 16, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported and is set forth in Appendix A at pages 1 through 71. The findings and order of the District Court on respondents' motion for preliminary injunction are set forth in Appendix B at pages 72 through 76. The order of the District Court denying respondents' motion to amend the court's findings and order is set forth in Appendix C at pages 77 through 81.

JURISDICTION

The judgment of the Court of Appeals was entered on April 16, 1973. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether considerations of comity amplified by this Court's recent decisions and made locally applicable in the District of Columbia Court Reform and Criminal Procedure Act of 1970 require that the federal courts of the District of Columbia defer to the newly created local court system in an equity action challenging the administration of local criminal laws relating to the vacation of forfeitures of collateral on local misdemeanor charges and maintenance of arrest records and the application of such laws to individuals arrested in connection with the massive street disorders arising out of the 1971 "May-Day" demonstrations.

2. Whether, in light of the unique status of the District of Columbia which makes it constitutionally distinct from the States, the Court of Appeals erroneously construed 28 U.S.C. § 1331(a) as conferring federal question jurisdiction in an action to redress alleged violations of civil rights by District of Columbia officials acting in a purely local capacity by force of locally applicable congressional enactments.

3. Whether the Court of Appeals applied impermissible Fourth Amendment standards in declaring invalid arrests made under exigent circumstances to contain riotous street conditions in a massive civil disorder situation, because the police, in order to cope with the emergency, were, of necessity, forced to suspend their practice of contemporaneously executing field-arrest forms and taking Polaroid photographs.

STATUTES INVOLVED

The District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 474, 484, D.C. Code, 1967, Supp. V, 1972, § 11-921, Civil jurisdiction:

> "(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jursidiction shall vest in the court as follows:
>
> * * * * *
>
> (2) Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity, which is begun in the Superior Court on or after such effective date and in which the amount in controversy does not exceed $50,000."

Act of March 3, 1875, 18 Stat. 470, § 1, as amended, 28 U.S.C. § 1331(a), Federal question; amount in controversy; costs:

> "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

STATEMENT OF THE CASE

Petitioners are the District of Columbia Corporation Counsel, the Metropolitan Police Chief, the Commissioner of the District of Columbia, and the Clerk of the District of Columbia Superior Court. Petitioners seek review of the decision of the United States Court of Appeals for the District of Columbia Circuit that federal jurisdiction was correctly invoked in a class action for equitable relief brought by those involved in the "May-Day" demonstrations of 1971.

At the outset, petitioners wish to emphasize that, in their view, the factual version advanced by the Court of Appeals is unacceptably incomplete and inaccurate. However, since the position of petitioners is based on federal jurisdictional considerations and Fourth Amendment concerns which do not require analysis of a detailed factual statement petitioners will not set forth such a statement, but will summarize only those facts necessary to bring into focus the essential thrust of the challenged rulings.

In the spring of 1971, the "May-Day" collective distributed a Tactical Manual (set forth in Appendix D)[1] delineating its plan for the then proposed "May-Day" demonstrations in the Nation's Capital, and stating that the objective of such demonstrations was "to close down the Federal government sections of Washington, D.C., by blocking traffic arteries during the early morning rush hours of May 3 and 4" (Manual at p. 3). Thereafter, between April 27 and May 5, 1971, there ensued in the District a series of civil disturbances as a result of which thousands of demonstrators were arrested on local disorderly conduct charges (App. A at pp. 13-27). Some of the arrested individuals forfeited collateral at their place of detention, and others were proceeded against in the District of Columbia Superior Court where the cases were terminated in various ways.

The principal demonstration activities and those with which the Court of Appeals was primarily concerned occurred on Monday, May 3, 1971. On that occasion thousands of demonstrators, pursuant to their announced plan, converged at critical traffic arteries, and their ensuing activities consisted, *inter alia*, of damaging automobiles, littering streets with nails and broken glass and physically blocking traffic (App. A at pp. 16-17).

[1] The Manual is part of the record before the Court of Appeals. It was attached as Exhibit D to petitioners' opposition to respondents' motion for preliminary injunction filed in the District Court.

At about 6:23 a.m., the Metropolitan Police Chief made the decision to abandon field-arrest procedures. He stated in this connection that:

> "* * * [I]t is not practical for the police to rapidly arrest hundreds of individuals who are blocking traffic and process them through the field arrest process. The field arrest process takes a matter of several minutes for each individual, primarily because for an effective field arrest process one must have a Polaroid process and the form itself is not that useful. I think if you project several minutes through 9,000 arrests you come up with something like 10 hours that you let anything else happen while you are processing. It is not practical for the police to prepare field arrest forms even under ideal circumstances, which these were not, and go through the process and make arrests rapidly enough to deal with several thousand demonstrators." (See Deposition of Metropolitan Police Chief Wilson in *Kuhn* v. *Wilson* (No. C. A. 956-71, D.D. C.) at pp. 84-85, App. E, *infra.*)

Thousands of demonstrators were subsequently taken into custody and detained at various local facilities, the principal facility being the District of Columbia Coliseum. A substantial number of individuals refused to submit the standard information required for booking procedures in accordance with the statutory requirement soon upheld by the District of Columbia Court of Appeals in a related habeas corpus action (App. A at pp. 21-22). Most individuals, however, provided the required information and upon being booked, photographed, and making $10 collateral deposits either elected to stand trial (2,878 individuals) or to forfeit collateral (1,822 individuals) (App. A at p. 24).

After the series of demonstration activities had subsided and arresting officers became available to examine photographs taken during the booking process, the officers viewed an extensive photographic display in an attempt

to link particular individuals to particular arrests of May 3. In cases in which the originally unpreserved evidence could be reconstructed and the necessary identifications made, informations were prepared. In cases in which recollections had faded, informations were not prepared and the individuals involved were appropriately notified of the District's decision not to prosecute (App. A at p. 28).

In a class action for declaratory and injunctive relief filed in the District of Columbia on May 24, 1971, respondents sought to enjoin the prosecution of all persons arrested in connection with the "May-Day" demonstration activities occurring during the week of May 3, 1971, unless there existed a contemporaneous field-arrest form and accompanying Polaroid photograph of each such person. Respondents also sought to compel the return to each person of any collateral posted following arrest. (App. A at pp. 3-4.) In reversing an order of the District Court denying respondents' motion for temporary injunctive relief, the Court of Appeals, on May 26, 1971, ordered that until the District Court ruled on respondents' motion for preliminary injunction, petitioners "* * * are enjoined from the further prosecution of any cases, against * * * [respondents] or members of the class * * * [respondents] purport to represent, in which * * * [petitioners] do not reasonably believe that they have in their files and records adequate evidence to support probable cause for the arrest and charge, and in which, for this reason, * * * [petitioners] intend to consent to dismiss on the appearance of the defendants in court * * *." The Court of Appeals went on to order petitioners to take "all reasonable steps to avoid requiring the appearance of those against whom * * * [petitioners] reasonably believe there is insufficient evidence to justify continuation of the prosecution, and to notify those who are not required to appear." (App. B at p. 75.)

Following the entry by the Court of Appeals of its order of May 26, 1971, respondents amended their complaint to include all arrests resulting from "May-Day" demonstration activities, whether or not accompanied by field-arrest forms and contemporaneous Polaroid photographs, and, in their expanded prayer for relief, respondents requested the court to order: (1) that the government undertake a further screening of prospective prosecutions by interviewing prospective witnesses to determine whether there existed a prima facie case; (2) that all forfeited collateral be set aside until the government can represent in good faith that there was probable cause for the arrest and that the individual waived his right to trial; and (3) that all records of arrest of respondents, and the persons in the class that they purport to represent, be expunged (App. B at p. 73). Petitioners claimed that there was no basis for the exercise of federal equity jurisdiction, and, after conducting a hearing, the District Court ruled that petitioners "have complied and are continuing to comply in good faith with directives of the Court of Appeals" and denied respondents' request for preliminary injunctive relief as to the mass setting aside of forfeitures of collateral and the mass expungement of arrest records. The court specifically noted, *inter alia*, that the District of Columbia Superior Court rather than the District Court was the forum to which respondents' request for the expungement of arrest records should be directed. (App. B at pp. 74-75, App. C at pp. 77-81.)

The Court of Appeals reversed the order of the District Court, holding that, under the Fourth Amendment to the Constitution, all arrests unaccompanied by field-arrest forms and contemporaneous Polaroid photographs were presumptively invalid, but that the supposed presumption could be rebutted by petitioners upon a showing that a particular arrest was based on probable cause

(App. A at p. 53). The Court held that under 28 U.S.C. § 1331 there was a basis for federal equity jurisdiction (App. A at p. 38), in the exercise of which petitioners can be compelled to set aside forfeitures of collateral and to expunge arrest records. Petitioners again claimed that such federal jurisdiction could not be invoked, urging that respondents' remedy lies within the broad congressionally conferred equitable jurisdiction of the Superior Court under the District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473 et seq. (hereinafter "the Court Reform Act") (cf. App. A at p. 42, n. 35). Petitioners accordingly request this Court to review the refusal of the Court of Appeals to defer to the jurisdiction of the District of Columbia Superior Court under that enactment, as well as the Fourth Amendment ruling made by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

In countenancing the invocation in this case of federal civil rights jurisdiction and the consequent federal interference with the administration by petitioners of local criminal laws, the Court of Appeals has raised a serious and substantial question concerning comity considerations ingrained in the recently enacted District of Columbia Court Reform Act and amply fortified by recent decisions of this Court. Throughout the course of this litigation, it has been the position of petitioners that the local court system created by that Act is fully capable of dealing with the entire matter. It is submitted that the issue of the interrelationship between the two congressionally created court systems in the context of jurisdiction over local matters is an important issue which this Court should settle with finality.

As this Court recently recognized in *Palmore* v. *United States*, —— U.S. —— (No. 70-11, decided April 24, 1973, slip op. at pp. 2-3, 18-19), the independent judicial

system created for the District in the Court Reform Act has been equipped by Congress with a full panoply of legal and equitable powers. 84 Stat. 484. That system has jurisdiction to vacate forfeitures of collateral on local criminal charges, to entertain actions designed to preclude improper dissemination of arrest records, and to promulgate rules of procedure under which justice may be equitably dispensed. Acting pursuant to the Court Reform Act (see 84 Stat. 487), the Superior Court has promulgated a rule requiring that a request to vacate forfeitures of collateral be made within 90 days of the forfeiture (App. A at p. 45). And the District of Columbia Court of Appeals has fully delineated the extent to which one seeking expungement of arrest records is entitled to equitable relief in accordance with applicable congressional enactments administered by petitioners. See *Spock* v. *District of Columbia*, 283 A. 2d 14 (D. C. App., 1971); *District of Columbia* v. *Sophia*, —— A.2d —— (D.C. App., Nos. 6660-61-62, decided June 29, 1973) (compare App. A at p. 45). Both arrest record relief and forfeiture relief are inextricably intertwined with the local administration of the District's criminal laws under the Court Reform Act. Since the judicial system created by Congress in that Act is fully capable of dealing with its own local criminal matters in the exercise of its own legal and equitable powers, and (together with this Court) is at all stages ready and able to properly vindicate any alleged federal rights (whether or not of constitutional dimension), no warrant whatever appears for federal equity intervention in the criminal processes of the District of Columbia courts.

In *Younger* v. *Harris*, 401 U.S. 37, 44 (1971), this Court observed that the federal-state comity principle requires "proper respect for state functions" preclusive of improper federal interference with the administration of state criminal laws. More recently in *Preiser* v. *Rodriguez*, —— U.S. —— (No. 71-1369, decided May 7,

1973), this Court made it plain that the comity principle is not limited to cases involving an ongoing criminal proceeding and that, contrary to the ruling of the Court of Appeals (App. A at p. 41), that principle applies even after such a proceeding has been fully terminated (slip op. at p. 16). In *Preiser*, as here, application of the principle was sought in the context of "the interrelationship of two important federal laws" (slip op. at p. 7). To be sure, the concern in this case is not with the relationship between the federal judicial system and that of a state, but with *two federally created judicial systems* designed to function independently under two congressionally enacted jurisdiction conferring statutes, i.e., the Court Reform Act and 28 U.S.C. § 1331(a). Given these circumstances, it would certainly appear that the need for federal judicial supervision of the courts of the District of Columbia in cases like the instant one is less compelling than in a federal-state context, and that the federal-state comity principle has *a fortiori* applicability. See *District of Columbia* v. *Carter*, 409 U.S. 418, 429-432 (1973). The principle should be no less applicable simply because this case involves mass arrests made under necessitous circumstances rather than a solitary instance in which the District's criminal processes have been brought to bear.

Unquestionably therefore, comity considerations articulated in recent decisions of this Court and made locally applicable by Congress in the Court Reform Act cast serious doubt on the propriety of the ruling of the Court of Appeals that this case gives rise to the invocation of federal equity jurisdiction under 28 U.S.C. § 1331(a).

The ruling of the Court of Appeals also presents the more basic question of whether 28 U.S.C. § 1331(a) was ever intended to vest federal question jurisdiction in the United States District Court for the District of Columbia where, as here, an alleged violation of civil rights is

attributed to District of Columbia officials acting in a purely local capacity.

In focusing on the new congressionally created system of "strictly local courts" in *Palmore* v. *United States*, *supra* (slip op. at pp. 17-19), this Court observed that such tribunals have Article I constitutional jurisdiction over "cases arising under the District of Columbia Code and * * * other matters of strictly local concern" and "responsibility [under the Court Reform Act] for trying and deciding those distinctive local controversies that arise under local law, including local criminal laws having little, if any, impact beyond the local jurisdiction." It would indeed be an anomaly entirely out of keeping with the creation by Congress of such a local court system with its unique Article I constitutional status, to construe 28 U.S.C. § 1331(a) as enabling a criminal defendant charged with an offense under the District of Columbia Code to invoke the "federal-question" jurisdiction of the federal courts in the District of Columbia by alleging that the District of Columbia authorities have, in the process of administering local criminal laws, violated the defendant's federal constitutional rights. The provisions of 28 U.S.C. § 1331(a) were not designed for this purpose, and should not be read in a manner which frustrates the congressional objective in vesting Article I constitutional powers in the District of Columbia court system under the Court Reform Act.

As we develop *infra*, the provisions of 28 U.S.C. § 1331(a) were enacted for the purpose of strengthening the Federal Government's position *vis-a-vis* the States, and should be construed consonantly with that purpose. But, at the same time, they should be construed consonantly with the unique Article I constitutional status of the local court system. This Court should certainly consider such an important issue on certiorari and forthrightly rule that the purpose of the Court Reform Act

must not be defeated by a different construction of § 1331 (a).

As this Court recently noted in *District of Columbia* v. *Carter*, *supra*, 409 U.S. at 427-428, n. 20, § 1331(a) had its genesis in Section 1 of the Act of March 3, 1875, 18 Stat. 470, which granted the federal district courts

> "* * * original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States. * * *"[2]

In *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 548 (1972), this Court observed that the "1875 Act * * * like the [Ku Klux Klan] Act of 1871" construed in *Carter*, was "an expansion of national authority over matters that, before the Civil War, had been left to the States,"[3] and, as such, "'* * * part of * * * the trend of legislation which preceded it.' * * *" The Court went on to note that the 1875 Act "'was orignially introduced in the House of Representatives in the form of a bill to amend the removal statute,'" and that "the passage of the [1875] Act * * * has been regarded as the 'culmination of a movement * * * to strengthen the Federal Government against the states.'" (*Id.*) In

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[2] A companion provision in § 1 of the 1875 Act confers federal jurisdiction on the basis of diversity of citizenship. It is quite significant, however, that such a diversity provision was originally insufficient to confer federal jurisdiction in an action in which one of the two parties was a citizen of the District of Columbia. See *Cameron* v. *Hodges*, 127 U.S. 322 (1888). Federal jurisdiction in an action of this kind simply could not be invoked until Congress specifically legislated with respect to the District in a diversity context in the Act of April 20, 1940, 54 Stat. 143.

[3] Prior to the enactment of these statutes "* * * Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws. * * *" *Zwickler* v. *Koota*, 389 U.S. 241, 245 (1967), an historical notion obviously irrelevant to the District.

Carter, however, this Court made it clear that historical considerations of this kind are wholly at variance with the notion that Congress intended § 1 of the Ku Klux Klan Act of 1871, 42 U.S.C. § 1983, to apply in the District and went on to point out (409 U.S. at 429) that:

> "There was no need, however, to create federal court jurisdiction for the District of Columbia. Even prior to 1871, the courts of the District possessed general jurisdiction over both federal and local matters. Act of March 3, 1863, c. 91, 12 Stat. 762. Thus, the jurisdictional aspects of § 1 of the 1871 Act were entirely superfluous with respect to the District.* * *"

In light of these considerations, it becomes apparent that there is a highly important question as to whether Congress similarly viewed the jurisdictional aspects of § 1 of the 1875 Act as "entirely superfluous with respect to the District" in cases such as the instant one, and accordingly intended local civil rights matters to be resolved exclusively by the local judiciary under local jurisdiction conferring statutes such as the Court Reform Act,[4] instead of by the federal courts of the District of Columbia under 28 U.S.C. § 1331(a). This question takes on added significance when it is considered that in two recent post-*Carter* decisions, in addition to the instant one, the Court of Appeals has held that the federal courts of the District may grant injunctive relief against District of Columbia officials in civil rights actions under § 1331(a). See *Gomez, et al.* v. *Wilson, et al.*, —— F.2d —— (No. 71-1484, D.C. Cir., March 23, 1973, slip op. at p. 14); *The Washington Free Community, et al.* v. *Wilson*, —— F.2d —— (No. 71-2008, D.C. Cir., May

[4] Congress indeed recognized as much in the Court Reform Act itself when it provided in that Act that "for purposes of" Chapter 85 of Section 28 of the United States Code which contains § 1331(a) "references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia." See 84 Stat. 590, 28 U.S.C. § 1363.

28, 1973, slip op. at p. 6, n. 5). In taking such a jurisdictional approach, the Court of Appeals has attempted to find support in this Court's parting pronouncement in *Carter* (409 U.S. at 432-433) that:

> "* * * This is not to say, of course, that a claim, such as a *possible claim* against Officer Carlson, of alleged deprivation of constitutional rights is not litigable in the federal courts of the District. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971); Bell v. Hood, 327 U.S. 678 (1946). * * *" (Emphasis added.)

Apart from being dictum, this pronouncement can easily be reconciled with the position of petitioners. The record before this Court in *Carter* was completely silent as to whether Officer Carlson, at the time of the misconduct attributed to him, was enforcing an Act of Congress of nationwide application or one of purely local application. If the former, there would be a basis for analogy with *Bivens* in which federal jurisdiction was correctly invoked under § 1331(a) and the "possible" claim thereunder would become a real one for purposes of federal question jurisdiction under that enactment. Here, however, we are concerned with purely local violations of law prosecuted by the Corporation Counsel. Consequently, the above-quoted *Carter* dictum cannot undercut the importance of the question of applicability of § 1331(a) in cases such as the instant one, and, if anything, underscores the need for its prompt resolution by this Court.

A further important question warranting consideration and resolution by this Court is raised by the Fourth Amendment standards applied by the Court of Appeals.

This aspect of the Court's decision grows out of the order of the Metropolitan Police Chief issued on May 3, 1971. Acting out of clear necessity, the Chief directed

that, in effecting the arrests of persons involved in the massive street disorders, the police should temporarily suspend "field-arrest" procedures, which consist of the contemporaneous execution of a short information form and the taking of a Polaroid photograph for later identification purposes (see App. E, *infra*).

The temporary emergency suspension of field-arrest procedures was ordered by the Police Chief because, in his judgment, the utilization of such procedures was simply too time-consuming under the exigent circumstances involved. This police action was taken in order to effectively preserve peace and order in the streets since, at the time of the suspension, large groups of persons were converging on main-traffic-artery-points and carrying out their unlawful and disruptive activities.

The Fourth Amendment standards enunciated by this Court fully sustain the use of reasonable police measures required, of necessity, to prevent riot-bent unlawful assemblies from effecting planned outrage in the streets, and to promptly and effectively suppress riotous street disorders once they have erupted. These Fourth Amendment standards allow police officers to take, in the performance of their duties, those measures that are necessary and reasonable, under all the circumstances, in street situations. *Terry* v. *Ohio*, 392 U.S. 1, 20-27 (1968). "No one formula" is prescribed that can fit all exigent circumstances. Cf. *Illinois* v. *Allen*, 397 U.S. 337, 343, 345-347 (1970).

As for the settled police power to lawfully effect the arrest of participants in riotous activities, see *Stotland* v. *Pennsylvania*, 398 U.S. 916 (1970), appeal "dismissed for want of a substantial federal question" from decision rendered in *Commonwealth* v. *Stotland*, 251 A. 2d 701 (Pa. Super. Ct. 1969); *Original Fayette Co. Civic & Welfare League* v. *Ellington*, 309 F. Supp. 89, 93-94 (W. D. Tenn., 1970) (three-judge court); *United States*

v. *Fenwick*, 4 D. C. (Cranch) 675, 679-681 (Cir. Ct., 1836).

Here, the Court of Appeals conceded *arguendo* that the police acted lawfully in making arrests during the riotous emergency with which they were confronted on May 3, 1971, in the course of the massive "May-Day" civil disorders which occurred on that date (App. A at p. 37). But because the police, acting out of necessity, suspended for the duration of that riotous emergency the use of their time-consuming "field-arrest" procedures, the Court of Appeals held that for "the protection of Fourth Amendment rights" it was warranted to declare these arrests unlawful *ab initio* upon failure of the District of Columbia authorities to later make an "affirmative showing" on an individual basis of "probable cause" (App. A at p. 53).

The fatal vice in this Fourth Amendment ruling is that it disregards the indicated operative principle of necessity. In exigent circumstances where such action is necessary, the police must be able to act promptly and effectively to quell, by arrest, riot-bent unlawful assemblies. Here, the purpose of the unlawful assemblies had been publicly announced before respondents took to the streets *en masse*. Under necessitous circumstances, the police were duty-bound to take the arrest measures they did, in order to stop these unlawful assemblies from accomplishing their avowed riotous outrage. The Constitution was never meant as a "suicide pact." Mr. Justice Jackson, dissenting in *Terminiello* v. *Chicago*, 337 U.S. 1, 37 (1949).

Thus, the Court of Appeals basically misconceived the matter. Since the arrests were lawful, there was no warrant here for the Court of Appeals to construct a Fourth Amendment issue out of the inability of the police, under the indicated emergency circumstances, to preserve the evidence needed for purposes of prosecution. As the Dis-

trict Court found, petitioners proceeded in good faith on an individual basis to determine in which cases prosecutions should proceed, or be discontinued for want of sufficient available evidence.

It would surely be in the public interest for this Court to determine the constitutional procedure that should be followed where persons involved in massive civil disorder situations are taken into custody, and the police find they must of necessity temporarily suspend their practice of using "field-arrest" procedures for later identification purposes.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the jurisdictional ruling of the Court of Appeals strikes at the heart of the new District of Columbia court system created by Congress in the Court Reform Act and raises a substantial comity question under that Act and this Court's recent decisions. That ruling presents an equally important question concerning the amenability to federal jurisdiction of District of Columbia officials acting in a purely local capacity under locally applicable laws. In addition, the Fourth Amendment ruling of the Court of Appeals presents a question having a substantial impact on the administration of justice under emergency conditions. To the end that these questions be promptly settled with finality, the petition for a writ of certiorari should be granted.

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Appendix D to petition not included in bound volume.